

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

ORIGINAL

77-7205

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IMAGE CARRIER CORPORATION,

Plaintiff-Appellee,

-against-

ABRAHAM D. BEAME, Mayor of New York
City, et. al.,

Defendants-Appellants.

THE HOUSE OF LITHOGRAPHY, INC.,
et. al.,

Plaintiffs-Appellees,

-against-

ABRAHAM D. BEAME, Mayor of New York
City, et al.,

Defendants-Appellants.

On Appeal From a Judgment of the United
States District Court for the Southern
District of New York

APPELLANTS' REPLY BRIEF

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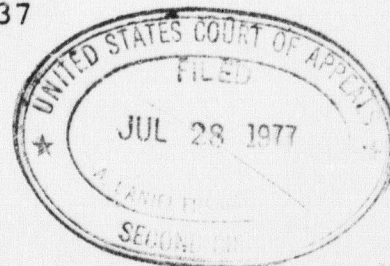


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APPELLANTS' REPLY BRIEF

Statement

(1)

Plaintiffs-respondents have raised a number of procedural and substantive issues in their brief, all of which have been adequately discussed in Appellants' Brief. The necessity for a reply brief arises solely out of a misleading statement of fact contained in Respondents Brief.

In their brief at page 26 respondents state: "Under paragraph 1 of the Order, an employee must not only be represented by a labor organization but a labor organization which itself is a member of the Allied Printing Trades Council of the City of New York so that his or her employer can display that organization's label." The effect of this statement is to create the misleading impression that the policy as applied today still favors the members of the Allied Printing Trades Council over other unions. Such is not the fact.

Although it is true that the Mayoral Order of April 12, 1934, as promulgated, did direct that only the label of the Allied Printing Trades Council of the City of New York should appear on all printed forms purchased by the Board of City Record (182a), the designation of that particular labor organization was enjoined by judicial order in 1937. Amalithone Realty Co., Inc. v. City of New York, 162 Misc. 715, 717 (Sup. Ct., Spec. T., N.Y. Co.), aff'd, 25 AD 450 (1st Dept., 1937). The present policy merely requires the contractor to employ union members, without distinction as to which union label shall appear on the printed product.

In upholding the policy generally, however, the Court took cognizance of the justified rationale for the union label requirement, stating:

"The City of New York is justified in its demand that the materials and supplies sold to it by contractors be manufactured by union labor. ...

"Much progress has been made in economic thinking since [1901-1906]. Even though the immediate cost in dollars and cents to the City may be higher than the cost of sweatshop products, we have now come to recognize the greater ultimate cost to the people as a whole which results from low wages, overlong hours and unsanitary working conditions. The presence of the union label may reasonably be considered as a fair assurance that the products have been manufactured under conditions in accord with our present day social consciousness. In these days when much of the effort of government is directed toward securing decent standards of pay and work for labor, not only by direct legislation but also by legislation protecting the right of collective bargaining, it would certainly be strange to say that the city or State itself may not insist that its own products be made according to fair standards" (162 Misc. at 716).

Thus, regardless of what the law may be in other jurisdictions, it has long been the recognized public policy in the State of New York to favor labor organization and collective bargaining. It was upon such rational basis that the policy at issue was instituted and has remained in effect through every administration for over 43 years.

(2)

In reply to Point IV of Respondents' Brief in which respondents contend that appellants have the burden of showing a compelling state interest to justify the disputed policy, appellants respectfully direct this

Court's attention to pages 9-10 of their brief in which the rational basis standard applicable to this case, as determined by Judge MacMahon, is fully discussed. It is noted that respondents did not appeal the application of the rational basis standard by the Court below. Appellants submit that the rational basis test is the controlling standard.

(3)

It is further submitted, in response to Point V of Respondents' Brief, that the policy herein is completely consistent with federal law and policy. The attention of the Court is respectfully directed to pages 11-17 of Appellants' Brief, particularly the discussion regarding the very recent decision in Abood v. Detroit Board of Education, 97 Sup. Ct. 1782 (1977).

CONCLUSION

THE ORDER OF THE DISTRICT COURT SHOULD
BE REVERSED AND THE COMPLAINT DISMISSED.

July 28, 1977

Respectfully submitted,

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for the City of New York,
Attorney for Appellants.

LEONARD KOERNER,
CAROLYN E. DEMAREST,
of Counsel.

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

City, County and State of New York, ss.:

being duly sworn, says, that on the 28 day of JULY, 1977
 at No. 130 E. 40th St. in the Borough of MANH. in The City of New York, he served three copies
 of the annexed BRIEF upon MENACH & TRAINOR, Esq.,
 the attorney for the OPP ATTY in the within entitled action by delivering
 three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and
 leaving the same with him.

Sworn to before me, this 28day of JULY, 1977

BRUCE S. GARNER
 Commissioner of Deeds
 City of New York - No. 4-1786
 Commission Expires May 1, 1978

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

BRUCE GARNER being duly sworn, says that on the 28 day
 of JULY, 1977, he served the annexed APPL'S REPLY BRIEF upon
LOOMIS, OWEN FELDMAN & COLEMAN Esq., the attorney for the OPP ATTY
 herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and
 Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the
 United States in said city directed to the said attorney at No. 2080 K St., N.W. in the
~~Borough of Washington, D.C.~~ City of New York, being the address within the State theretofore designated by
 him for that purpose.

Sworn to before me, this

28 day of JULY, 1977

JAMES BURNS
 Commissioner of Deeds
 City of New York - No. 4-1787
 Commission Expires May 1, 1978

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

City, County and State of New York, ss.:

being duly sworn, says, that on the 28 day of JULY, 19 77
 at No. 220 E. 42ND ST. in the Borough of MANH. in The City of New York, he served three copies
 of the annexed BRIEF upon TOWNLEY & FODIKE Esq.,
 the attorney for the OFF RTH in the within entitled action by delivering
 three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and
 leaving the same with him.

Sworn to before me, this 28day of JULY, 19 77

BRUCE S. GARNER
 Commissioner of Deeds
 City of New York - No. 4-1786
 Commission Expires May 1, 1978

Bruce Garner

Ivan Badillo